

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Christopher Conway	Team: Squad #15	CCRB Case #: 201508895	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Monday, 10/19/2015 6:30 PM	Location of Incident: 225th Street and 149th Avenue	Precinct: 105	18 Mo. SOL 4/19/2017	EO SOL 4/19/2017	
Date/Time CV Reported Mon, 10/19/2015 7:12 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Mon, 10/19/2015 7:12 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Christophe Noll	02470	948110	105 PCT
2. POM Paul Kearon	26316	948363	105 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Paul Kearon	Abuse: PO Paul Kearon stopped § 87(2)(b)	
B.POM Paul Kearon	Abuse: Paul Kearon frisked § 87(2)(b)	
C.POM Paul Kearon	Abuse: PO Paul Kearon searched § 87(2)(b)	
D.POM Christophe Noll	Off. Language: PO Christopher Noll made remarks to § 87(2)(b) based upon race.	
§ 87(4-b), § 87(2)(g)		

Case Summary

On October 19, 2015, § 87(2)(b) filed this complaint with the CCRB via the online website.

Around 6:30 p.m. on October 19, 2015, § 87(2)(b) was emerging from Idlewild Park onto 225th Street in Queens after finishing a jog when he was stopped by PO Paul Kearon of the 105th Precinct (**Allegation A**). During the course of the interaction, PO Kearon frisked and searched § 87(2)(b) (**Allegations B and C**), and § 87(2)(b) alleged that PO Kearon's partner, PO Christopher Noll, made remarks based on his race (**Allegation D**).

§ 87(2)(b) was not arrested nor did he receive a summons as a result of this incident.

Mediation, Civil and Criminal Histories

- During his sworn-statement, mediation was offered to § 87(2)(b) as an alternative to resolve his complaint, but he rejected this option as an alternative.
- A FOIL request was sent to the Office of the New York City Comptroller on December 1, 2015, seeking any notice of claim filed by § 87(2)(b) regarding this incident. Results will be included in this case file upon its return.
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Civilian and Officer CCRB History

- This is the first complaint filed by § 87(2)(b) with the CCRB (encl. 05 Board Review).
- PO Kearon has no substantiated allegations against him in his six-year tenure with the New York City Police Department. § 87(2)(g)
- PO Noll has no substantiated allegations against him in his six-year tenure with the New York City Police Department. § 87(2)(g)

Finding and Recommendations

Recommendations

Allegation A—Force: PO Paul Kearon stopped § 87(2)(b)

Allegation B—Force: PO Paul Kearon frisked § 87(2)(b)

Allegation C—Force: PO Paul Kearon searched § 87(2)(b)

§ 87(2)(g) It is undisputed that there was a smell of marijuana emanating from the park (according to § 87(2)(b) caused by an unknown male smoking marijuana further along down the path; encl. 01 Board Review). PO Kearon and PO Noll observed § 87(2)(b) walking out of Idlewild Park and stopped him immediately in front of the guardrail that marks the entrance to the jogging path. After stopping § 87(2)(b) PO Kearon frisked and searched him. § 87(2)(g)

PO Kearon's memo book entry indicated that § 87(2)(b) was stopped for criminal possession of marijuana, criminal trespass, and robbery, and PO Kearon prepared a Stop, Question, and Frisk report regarding the reasons behind the stop, frisk, and search (encl. 04 Board Review).

PO Kearon described (encl. 02 Board Review) observing § 87(2)(b) standing fully upright behind a guardrail in dim light, and he could not see anything § 87(2)(b) was doing, where his hands were, or if he was even facing in the officers' direction. PO Kearon smelled burning marijuana, but did not see any smoke or lit flame of any marijuana-smoking apparatus. PO Kearon stated his suspicion was raised because some New York City parks close at dusk; PO Kearon admitted he did not know when Idlewild Park closes.

Upon making these observations, PO Kearon pulled a U-turn and when he next observed § 87(2)(b) he saw that § 87(2)(b) was walking from the park trail onto 225th Street, wearing a hoodie with the hood down, and his hands were in his pockets. PO Kearon pulled up the RMP and asked § 87(2)(b) if he was smoking. § 87(2)(b) replied he was jogging, and continued walking towards the RMP. PO Kearon said that his suspicion was further raised as he believed § 87(2)(b)'s response was a lie (PO Kearon believed he was not jogging due to the marijuana smell), and he had changed directions and was moving evasively (which PO Kearon described as walking towards the RMP at a slight angle so as not to directly run into it). PO Kearon also explained that § 87(2)(b) was not wearing "jogging clothes"; PO Kearon could not describe what kind of clothes § 87(2)(b) was wearing.

Upon seeing § 87(2)(b) more closely, PO Kearon stated he fit the description of a robbery pattern. PO Kearon said the description of the perpetrator in the pattern was a black male in a hoodie approximately 19 years old. PO Kearon described the parameters of the robbery pattern location was Impact Zone 1 of the 105th Precinct. PO Kearon explained that his lieutenant tells him at roll call to look out for black males in hoodies inside the 105th Precinct, as they commit robberies related to this pattern. PO Kearon did not know the pattern number. PO Kearon did not know how long the pattern had been in place, or how many robberies made up the pattern or in what time frame the robberies had taken place. PO Kearon denied that Idlewild Park was a robbery-prone location, and said he has never made any arrests for robberies within Impact Zone 1 inside the confines of the robbery pattern's parameters. PO Kearon has never responded to a radio run for a robbery inside Zone 1. PO Kearon has never responded to any robbery-related call for service within the confines of the 105th Precinct.

PO Kearon exited the RMP and asked § 87(2)(b) to take his hands out of his pockets. § 87(2)(b) did not immediately comply, so PO Kearon frisked § 87(2)(b)'s waistband and torso for "officer safety." PO Kearon stated the primary reason behind the frisk was that § 87(2)(b) fit the description of the robbery pattern. PO Kearon did not see any bulges, and did not believe that § 87(2)(b) had any particular weapon, just "a weapon in general." During the frisk, PO Kearon felt a hard rectangular object in § 87(2)(b)'s jacket pocket. PO Kearon believed this object to be a Taser, but added "it could be anything." PO Kearon removed the object – which in actuality was § 87(2)(b)'s cell phone – and returned it to his pocket once satisfied it was not a weapon. PO Kearon stated that sometimes Tasers are disguised to look like cell phones.

PO Noll did not make the initial observation of § 87(2)(b)'s stop (encl. 03 Board Review), but generally corroborated the events. However, PO Noll described § 87(2)(b) as strongly smelling of marijuana and having glazed eyes, which PO Kearon did not describe. Also, PO Noll reiterated that the robbery pattern was black males in the Impact Zone, with no further description. In his interpretation of the Stop, Question and Frisk report that PO Kearon filled out, PO Noll suggested that "casing" and "lookout" referred to being in a robbery-prone location, and echoed that "drug transaction" referred to the strong smell of marijuana. PO Noll also did not believe that § 87(2)(b) was acting in concert with anyone else.

PO Kearon prepared a Stop, Question, and Frisk report for this stop, which he reviewed during his interview and confirmed that all details were accurate as he had initially written it. PO Kearon filled out the following justifications for the frisk and search (the report does not indicate that § 87(2)(b) was searched, which PO Kearon described as an "oversight").

- Inappropriate attire (PO Kearon affirmed that this referred to the hoodie, which also constituted a reason for the stop).
- Refusal to comply (PO Kearon described this as § 87(2)(b) nonverbally refusing to take his hands out of his pockets when initially stopped).
- Furtive movements (PO Kearon described this as § 87(2)(b) walking evasively, towards the RMP, with his hands in his pockets, and also as “hiding in bushes” which PO Kearon described as standing fully upright behind the guardrail on the trail. This was also a reason for the stop).

An officer must have reasonable suspicion of criminality before conducting a stop of an individual. People v. DeBour, 40 N.Y.2d 210 (1976) (encl. 07 Board Review). An officer needs particularized reasonable suspicion that a suspect is armed and dangerous before conducting a frisk or further search. People v Forrest, 77 A.D.3d 511 (2010) (encl. 06 Board Review).

§ 87(2)(g)

§ 87(2)(g)

Allegation D—Offensive Language: PO Christopher Noll made remarks to § 87(2)(b) based on race.

During the stop, § 87(2)(b) alleged that he used the slang phrase “You are doing the most” towards the officers, which he defined as being slang for the officers bothering him. In response, § 87(2)(b) alleged that PO Noll told him that he was “speaking Ebonics” and that he could not understand him because he spoke English.

PO Noll stated that § 87(2)(b) was cursing, yelling, and threatening to “hurt [the officers] financially,” but denied that he said “You’re doing the most.” PO Noll denied that he ever told § 87(2)(b) he was speaking “Ebonics” or using such a term towards § 87(2)(b) at any point of the incident.

PO Kearon denied hearing any part of this conversation, and denied that PO Noll used the term “Ebonics” towards § 87(2)(b) or made any similar commentary about slang or his way of speech.

§ 87(2)(g)

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